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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 04M-27  
03677

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|--|---|--------------------------|
| In The Matter of                             | ) | MB Docket No. 04-191     |
|  | ) |                          |
| <b>San Francisco Unified School District</b> | ) |                          |
|  | ) |                          |
| For Renewal of License for Station           | ) | Facility ID No. 58830    |
| KALW(FM), San Francisco, California          | ) | File No. BRED-19970801YA |

**MEMORANDUM OPINION AND ORDER**

**Issued:** September 30, 2004

**Released:** October 1, 2004

**Background**

1. This is a ruling on Joint Motion to Dismiss Golden Gate Public Radio as a Party ("Joint Motion") filed on September 16, 2004, by San Francisco Unified School District ("SFUSD") and the Enforcement Bureau ("Bureau"). There has been no Opposition filed within the time required by the Commission's rules. 47 C.F.R. § 1.294(c)(3).

2. In *Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, released July 16, 2004,<sup>1</sup> the Commission directed that Golden Gate Public Radio ("GGPR"), which had filed a petition to deny renewal of SFUSD's license, be made a party to this proceeding, and that copies of the *HDO* be sent to GGPR at its address of record.<sup>2</sup> The Commission also directed that written Notices of Appearance be filed within 20 days of the mailing of the *HDO* if a party wished to avail itself of the opportunity to be heard and the right to present evidence at a hearing, as provided in § 1.221 of the Commission's rules.<sup>3</sup> To date, GGPR has failed to file a Notice of Appearance, or to otherwise enter an appearance.

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<sup>1</sup> *In the Matter of San Francisco Unified School District for Renewal of License for Station KALW(FM), San Francisco, California*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13338, ¶ 27 (2004) ("*HDO*").

<sup>2</sup> The GGPR mailing address utilized was 484 Lake Park Avenue, Box 419, Oakland, California 94610-2730. *Id.* at 13339, ¶ 32.

<sup>3</sup> *Id.* at 13338-39, ¶ 30.

### Facts

3. The record reflects that on July 20, 2004, the Commission mailed, via certified mail, return receipt requested, a copy of the *HDO* to GGPR at its address specified in the *HDO*. (Jt. Motion, Exh. A.1.) The United States Postal Service deemed the mailing “undeliverable” and returned it to the Commission on August 2, 2004. (Jt. Motion, Exh. A.2.)

4. On August 11, 2004, the Commission mailed, via certified mail, return receipt requested, a second copy of the *HDO* addressed to Ms. Deirdre Kennedy, a person associated with GGPR.<sup>4</sup> (Jt. Motion, Exh. B.) The Commission subsequently received a signed acknowledgment card indicating that the *HDO* had been delivered to Ms. Kennedy’s San Francisco address on August 17, 2004. (Jt. Motion, Exh. C.) Based on the mailing date of August 11, 2004, the deadline for GGPR to file its written appearance was August 31, 2004. The Joint Motion establishes that the Commission has no record of GGPR’s filing the required Notice of Appearance.

5. Although GGPR “technically” exists, it has been inactive for some time and apparently has no continuing interest in pursuing the petition to deny that it filed in 1997.<sup>5</sup> On August 27, 2004, Ms. Kennedy acknowledged that she had been an active member of GGPR at the time the petition was filed, but she was no longer involved in the organization and had not been active for some time.<sup>6</sup> Ms. Kennedy stated to Bureau counsel that she believes the organization is in a “suspended” state because it failed to file legal papers that are necessary to keep it active.<sup>7</sup>

6. The Pre-Hearing Conference for this proceeding, set by *Order FCC 04M-22*, released July 23, 2004, was held on September 8, 2004. GGPR did not attend, either itself or by an attorney, or by a representative. There is no evidence that GGPR made any attempt to enter a parole appearance via telephone, fax, or e-mail.

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<sup>4</sup> In a supplement to GGPR’s petition to deny, Ms. Kennedy provided a Declaration dated January 28, 1998, in which she identified herself as a Director of GGPR.

<sup>5</sup> See Jt. Motion Exh. D, Declaration of Dana E. Leavitt, dated September 13, 2004 (“Leavitt Declaration re Lopez”).

<sup>6</sup> See Jt. Motion Exh. E, Declaration of Dana E. Leavitt, dated September 16, 2004.

<sup>7</sup> *Id.*

### **Rulings**

7. Section 1.221(e) of the Commission's rules provides that a party who fails to file a written appearance within 20 days of the mailing of the hearing designation order shall forfeit its hearing rights. 47 C.F.R. § 1.221(e). The Joint Motion establishes that the Commission first mailed the *HDO* to GGPR's last-known address. When that mailing was returned as undeliverable, the Commission mailed the *HDO* to Ms. Kennedy, whom the Commission's staff had understood to be a member of GGPR. On August 17, 2004, Ms. Kennedy acknowledged receiving the *HDO*. Yet despite such notice, GGPR has failed to file a written notice of appearance within 20 days of that date. Moreover, Mr. Jason Lopez, a person represented as having knowledge of GGPR, has stated that GGPR no longer wishes to pursue its Petition.

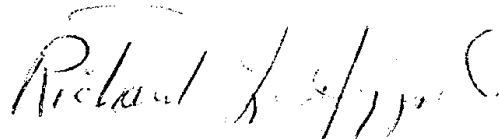
8. Based upon the record established by the *HDO* and Joint Motion, dismissal of GGPR as a party in this proceeding is timely and appropriate.

### **ORDER**

Accordingly, IT IS ORDERED that the Joint Motion to Dismiss Golden Gate Public Radio as a Party filed on September 16, 2004, by the Enforcement Bureau and San Francisco Unified School District, IS GRANTED.

IT IS FURTHER ORDERED that Golden Gate Public Radio IS DISMISSED as a party to this proceeding, with prejudice.

FEDERAL COMMUNICATIONS COMMISSION<sup>8</sup>

A handwritten signature in dark ink, appearing to read "Richard L. Sippel", is written over a faint, larger signature.

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>8</sup> Courtesy copies of this *Order* were transmitted to counsel for each of the parties by e-mail on the date of issuance.